

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DRIVELINE BASEBALL
ENTERPRISES, LLC, a Washington
Limited Liability Company,

Plaintiff,

v.

PRECISION IMPACT, INC., a Canadian
corporation,

Defendant.

No. 2:18-cv-00192-TSZ

**STIPULATED
PROTECTIVE ORDER¹**

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1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that

¹ This Stipulated Protective Order is substantially based on the model protective order provided under this Court's Local Civil Rules.

1 are entitled to confidential treatment under the applicable legal principles, and it does not
2 presumptively entitle parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things
5 produced or otherwise exchanged: proprietary competitive information, including but not
6 limited to non-public financial and marketing analyses, comparisons of competitor’s
7 products or services, and product/service expansion plans; and proprietary financial
8 information, including but not limited to customer and pricing lists, non-public balance
9 sheets, income statements, financial reports, and cash flow statements.

10 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” material
11 shall include the following documents and tangible things produced or otherwise
12 exchanged: extremely sensitive “Confidential Information or Items,” disclosure of which to
13 another party or non-party would create a substantial risk of economic harm or competitive
14 disadvantage to the producing party. Such information includes documents, information, or
15 material that contains trade secrets, proprietary financial or technical or commercially-
16 sensitive competitive information, including but not limited to strategic plans, technical
17 documents that would reveal trade secrets, or a third-party document to whom the party
18 reasonably believes it owes an obligation of confidentiality with respect to such documents.

19 3. SCOPE

20 The protections conferred by this agreement cover not only confidential material (as
21 defined above), but also (1) any information copied or extracted from confidential material;
22 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
23 testimony, conversations, or presentations by parties or their counsel that might reveal
24 confidential material.

1 However, the protections conferred by this agreement do not cover information that
2 is in the public domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is
5 disclosed or produced by another party or by a non-party in connection with this case only
6 for prosecuting, defending, or attempting to settle this litigation. Confidential material may
7 be disclosed only to the categories of persons and under the conditions described in this
8 agreement. Confidential material must be stored and maintained by a receiving party at a
9 location and in a secure manner that ensures that access is limited to the persons authorized
10 under this agreement.

11 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the designating party, a receiving party may
13 disclose any confidential material only to:

14 (a) the receiving party’s outside counsel of record in this action, as well
15 as employees of counsel to whom it is reasonably necessary to disclose the information for
16 this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of
18 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
19 parties agree that a particular document or material produced is for Attorney’s Eyes Only
20 and is so designated;

21 (c) experts and consultants to whom disclosure is reasonably necessary
22 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), provided that (1) such experts and consultants are not currently employees of
24 any Party and (2) before access is given, the expert or consultant has completed Exhibit A,
25 which is served upon the Producing Party with a written notice that includes (i) the name of
26 the expert or consultant, (ii) the present employer, business address, and title of the expert

1 or consultant, (iii) a current curriculum vitae of the expert or consultant, and (iv) a list of all
2 other cases in which, during the previous four (4) years, the expert or consultant testified as
3 an expert at trial or by deposition with a brief description of the subject matter of the
4 employment or consultancy in connection with those cases. Such written notice and
5 information shall be provided to the Producing Party at least ten (10) days before access to
6 the Protected Material is to be given to that expert or consultant;

7 (d) the court, court personnel, and court reporters and their staff;

8 (e) copy or imaging services retained by counsel to assist in the
9 duplication of confidential material, provided that counsel for the party retaining the copy
10 or imaging service instructs the service not to disclose any confidential material to third
11 parties and to immediately return all originals and copies of any confidential material;

12 (f) during their depositions, witnesses in the action to whom disclosure
13 is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
14 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the
15 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
16 confidential material must be separately bound by the court reporter and may not be
17 disclosed to anyone except as permitted under this agreement;

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information.

20 4.3 Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’
21 EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
22 writing by the designating party, a receiving party may disclose any information or item
23 designated “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” only
24 to individuals listed in 4.2(a), (c), (d), (e), and (g).
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1 4.4 Filing Confidential Material. Before filing confidential material or
2 discussing or referencing such material in court filings, the filing party shall confer with the
3 designating party to determine whether the designating party will remove the confidential
4 designation, whether the document can be redacted, or whether a motion to seal or
5 stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures
6 that must be followed and the standards that will be applied when a party seeks permission
7 from the court to file material under seal.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
10 party or non-party that designates information or items for protection under this agreement
11 must take care to limit any such designation to specific material that qualifies under the
12 appropriate standards. The designating party must designate for protection only those parts
13 of material, documents, items, or oral or written communications that qualify, so that other
14 portions of the material, documents, items, or communications for which protection is not
15 warranted are not swept unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that
17 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
18 unnecessarily encumber or delay the case development process or to impose unnecessary
19 expenses and burdens on other parties) expose the designating party to sanctions.

20 If it comes to a designating party's attention that information or items that it
21 designated for protection do not qualify for protection, the designating party must promptly
22 notify all other parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
24 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
25 or ordered, disclosure or discovery material that qualifies for protection under this
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1 agreement must be clearly so designated before or when the material is disclosed or
2 produced.

3 (a) Information in documentary form: (e.g., paper or electronic
4 documents and deposition exhibits, but excluding transcripts of depositions or other pretrial
5 or trial proceedings), the designating party must affix the word “CONFIDENTIAL” or
6 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEY’S EYES ONLY” to each page that
7 contains confidential material. If only a portion or portions of the material on a page
8 qualifies for protection, the producing party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial proceedings: the
11 parties and any participating non-parties must identify on the record, during the deposition
12 or other pretrial proceeding, all protected testimony, without prejudice to their right to so
13 designate other testimony after reviewing the transcript. Any party or non-party may, within
14 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
15 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-
16 party desires to protect confidential information at trial, the issue should be addressed
17 during the pre-trial conference.

18 (c) Other tangible items: the producing party must affix in a prominent
19 place on the exterior of the container or containers in which the information or item is
20 stored the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY.” If only a portion or portions of the information or item warrant protection,
22 the producing party, to the extent practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
24 to designate qualified information or items does not, standing alone, waive the designating
25 party’s right to secure protection under this agreement for such material. Upon timely
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1 correction of a designation, the receiving party must make reasonable efforts to ensure that
2 the material is treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation
5 of confidentiality at any time. Unless a prompt challenge to a designating party's
6 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
7 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party
8 does not waive its right to challenge a confidentiality designation by electing not to mount a
9 challenge promptly after the original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any
11 dispute regarding confidential designations without court involvement. Any motion
12 regarding confidential designations or for a protective order must include a certification, in
13 the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet
14 and confer conference with other affected parties in an effort to resolve the dispute without
15 court action. The certification must list the date, manner, and participants to the conference.
16 A good faith effort to confer requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
18 intervention, the designating party may file and serve a motion to retain confidentiality
19 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The
20 burden of persuasion in any such motion shall be on the designating party. Frivolous
21 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary
22 expenses and burdens on other parties) may expose the challenging party to sanctions. All
23 parties shall continue to maintain the material in question as confidential until the court
24 rules on the challenge.
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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that
6 party must:

7 (a) promptly notify the designating party in writing and include a copy
8 of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or
10 order to issue in the other litigation that some or all of the material covered by the subpoena
11 or order is subject to this agreement. Such notification shall include a copy of this
12 agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be
14 pursued by the designating party whose confidential material may be affected.

15 If the designating party timely seeks a protective order, the party served with the
16 subpoena or court order shall not produce any information designated in this action as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
18 ONLY” before a determination by the court from which the subpoena or order issued,
19 unless the party has obtained the designating party’s permission.

20 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
22 confidential material to any person or in any circumstance not authorized under this
23 agreement, the receiving party must immediately (a) notify in writing the designating party
24 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
25 the protected material, (c) inform the person or persons to whom unauthorized disclosures
26 were made of all the terms of this agreement, and (d) request that such person or persons

1 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
2 Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of
7 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
8 provision is not intended to modify whatever procedure may be established in an e-
9 discovery order or agreement that provides for production without prior privilege review.
10 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth
11 herein.

12 10. NON TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals, each
14 receiving party must return all confidential material to the producing party, including all
15 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
16 appropriate methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
18 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
19 deposition and trial exhibits, expert reports, attorney work product, and consultant and
20 expert work product, even if such materials contain confidential material.

21 The confidentiality obligations imposed by this agreement shall remain in effect
22 until a designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: January 30, 2019.

DATED: January 30, 2019.

3 **YARMUTH LLP**

PETERSON BAKER PS

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8 **ERISE IP, P.A.**

*Attorneys for Plaintiff Driveline
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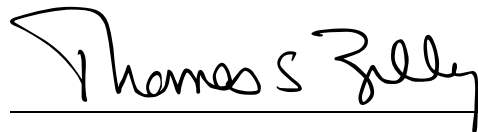
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16 PURSUANT TO STIPULATION, IT IS SO ORDERED

17 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
18 any documents in this proceeding shall not, for the purposes of this proceeding or any other
19 proceeding in any other court, constitute a waiver by the producing party of any privilege
20 applicable to those documents, including the attorney-client privilege, attorney work-product
21 protection, or any other privilege or protection recognized by law.

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23 DATED this 31st day of January, 2019.

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26 Thomas S. Zilly
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Western District of
7 Washington on _____ in the case of Driveline Baseball Enterprises, LLC v. Precision
8 Impact, Case No. 2:18-cv-00192-TSZ. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure to
10 so comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____